



Senate Committee on Natural Resources and Energy

2019 SB 310

Regulating fire-fighting foam that contains certain contaminants
and granting rule-making authority
September 3, 2019

Good morning, Chairperson Cowles and members of the Committee. My name is Darsi Foss and I am the Environmental Management Division Administrator with the Wisconsin DNR of Natural Resources. Today, I will be testifying on behalf of the DNR regarding this bill.

Thank you for the opportunity to testify on Senate Bill 323 regulating firefighting foam that contains certain contaminants and granting rulemaking authority. The bill prohibits testing and training with firefighting foams that contain intentionally added perfluoroalkyl or polyfluoroalkyl substances (PFAS) on a flammable liquid fire unless used in emergency firefighting or fire prevention operations. The bill does allow the use of PFAS-containing Class B firefighting foam for testing purposes if the testing facility has implemented appropriate containment, treatment and disposal measures to prevent the discharge of the foam to the environment.

The DNR would anticipate rulemaking under the authority of this bill to define and implement an approval process for testing facility plans to meet these requirements. Once that rulemaking process begins, it will likely take the DNR 30 months to have those requirements become effective to address the concerns in this bill. An emergency may expedite implementation but could result in a regulatory gap between when the emergency standards are in place and the final permanent rule.

PFAS are an emerging contaminant of concern that are not known to degrade in the environment and can impact human health and wildlife even at very low concentrations. There are over 3,000 PFAS with the most widely studied being perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS). Evidence suggests that exposure to PFAS, not just PFOA and PFOS, can lead to adverse human health effects including thyroid disease, decreased fertility, complications in pregnancy, low birth weights, decreased immune response, increased cholesterol, and cancer.

This bill would prevent or try to minimize *new discharges* of PFAS-containing fire-fighting foams (FFF) from negatively impacting communities, businesses and citizens *in the future*. This is a good thing. However, for decades, this foam has been used with no regulation throughout the state. We know that the state has communities that have already been negatively impacted by the testing, training and emergency use of PFAS-containing FFF. Municipal wells have been impacted and wells have been shut down in the cities of Madison, La Crosse and Rhinelanders due to FFF. Private wells have been contaminated in the town of Peshtigo. Biosolids in the cities of Peshtigo and Marinette have significant levels of PFAS from FFF that present costly disposal challenges. The Husky Refinery fire in Superior

presented unique challenges during and after the fire to contain the PFAS-containing waste water and contaminated soil.

Recommendations to Strengthen the State’s Authority to Minimize Future Discharges of PFAS-containing Fire-fighting Foams:

The DNR would like to offer the following suggestions to address the legislature’s concerns about future discharges of FFF containing PFAS.

1. Recommend amending bill to regulate “PFAS-containing fire-fighting foam”, not just Class B foam.

We make this recommendation based upon the DNR’s recent experience with two fire events. One event occurred at a Madison Gas & Electric property involving equipment owned by the American Transmission Company and another event occurred in Beaver Dam; firefighting foams were utilized at both by local fire departments. Following the Madison fire event, the fire department informed the DNR that the firefighting foam used contained no PFAS – based on their understanding from the manufacturer. The foam used is classified as dual action “Class A and B.” After review of the safety data sheet, DNR determined that the foam contained one, “short-chain” PFAS (i.e., six-carbon chain lengths or shorter) that subsequently entered the environment. Test results of the contaminated water recovered from the storm sewer contained more than a dozen PFAS compounds. In the recent incident in Beaver Dam, the DNR determined that the same “Class A and B” foam was used to put out a transformer fire involving a school. PFAS was detected in the soil contaminated by the emergency actions.

2. Require Manufacturers to Provide Clear Labeling of Fire Fighting Foams

Based on this recent experience and actions by other states, it would be prudent to require labeling of *all* firefighting foam content as to the type of PFAS compounds (not just PFOA or PFOS) and percentage of those PFAS substances. Since the Madison fire, the DNR is being asked by local fire DNR how they can best determine what is in the products they are using – and how to avoid PFAS FFF. Even Michigan, a leader in responding to the PFAS challenge, is struggling with this issue, as stated on their web site:

“It may not be easy to tell if the foam you have contains PFAS. These chemicals are not required to be reported on any Safety Data Sheets, as they are not considered a hazardous substance. PFAS may not be listed under any active ingredients list, either. A good indicator that the foam contains PFAS is if it mentions “fluorinated surfactant.” However, not all fluorinated surfactants are made of PFAS. The best thing to do is to note the brand and manufacturer of the foam and contact the manufacturer to see if PFAS is used in its production.”

The DNR recommends that the legislature require clear labeling of all PFAS-containing FFF containers, specifying the types and percentages of PFAS substances. Further, DNR recommends that all Safety Data Sheets clearly identify all PFAS substances individually and by percentage and be provided with all products – not just upon request by the consumer or regulatory agency. (See State of Washington bill.)

3. Require Those Using PFAS-containing FFF During an Emergency to Take Preventative and Mitigation Actions.

The DNR recognizes that the primary mission of fire DNRs is the protection of human safety and preservation of property. The DNR also believes that, during emergency events in which PFAS containing firefighting foams are used, early steps taken to contain the discharge of foam would reduce the environmental impact and reduce the cost to clean up a site after an emergency event. The DNR has additional, related technical comments on this topic in Appendix A. Halting or preventing further migration of the FFF will save businesses and tax payers money, and protect public health and the environment from unnecessary exposure.

4. Include a PFAS-containing FFF Clean Sweep Program

The legislature may also wish to consider supporting a clean sweep and disposal program for existing PFAS-containing firefighting foams from fire DNRs across the state to remove the potential for these materials entering the environment. AFFF has a shelf life of 20 years, and many fire DNRs may have this material in its inventory, especially historic FFF containing PFOA and PFOS. Many states have already taken this step.

5. Recommend that this Bill Defines Difference between Testing vs Training Facilities

DNR recommends there is a definition on what constitutes a training facility vs a testing facility. There are facilities that are both. One of the largest PFAS contamination sites in the state is a result of an FFF training facility.

6. Rules will take Several Years to Provide Safeguards.

The bill directs the DNR to enact rules to implement the bill, including development of appropriate containment, treatment and disposal measures for testing facilities (not training). Those safeguards that would prevent discharges or environmental pollution will take years to become effective, and only apply to FFF; but not to other industries that use PFAS in their production. In the event of an emergency rule, there will likely be a gap between the end of the emergency rule (i.e., up to 270 days) and the typical 30-month permanent rule.

Beyond this Bill, Listed Below are Recommendations to Strengthen State's Overall Authority to Address Discharges of PFAS-containing Fire-fighting Foams and PFAS Contamination that Have Already Harmed Wisconsin Communities:

The DNR has the following comments may be taken into consideration, in tandem with the FFF bill, on what the state could be doing overall:

1. PFAS Is More than a Fire-fighting Foam Issue. While this bill takes a needed step forward to prevent future discharges of PFAS from one known source – fire-fighting foam – it does not address the concerns over all the other hundreds of possible sources of PFAS contamination that may occur in the future.

2. State Needs Clear Authority to Address Existing PFAS Contamination. We know that the state is at the beginning of a long process to identify PFAS-impacted sites and communities. And from Michigan's and other states' experiences, we know that we will find more historic and ongoing PFAS contamination from many sources, not just FFF. While this bill draft would require development of containment, treatment and disposal measures for FFF testing facilities, there is an equal or greater need for the legislature to:
- a. Provide DNR clear authority to develop those same safeguards for other industries and businesses that use PFAS, not just FFF testing facilities.
 - b. Support clear standards to regulate municipal and industrial discharges of PFAS substances to the air, land and waters of this state.
 - c. Address the need to put in place standards immediately to provide certainty to impacted communities, businesses and citizens, such establishing an enforceable standard for groundwater, while rulemaking is undertaken.
 - d. Provide clear regulatory standards to ensure the safe handling of contaminated bio-solids, soil, surface water, groundwater, and sediments that are handled as a result of an environmental cleanup, a redevelopment project or everyday business activity.
 - e. Ensure that companies that have contaminated groundwater, surface water, and other contaminated media have the financial wherewithal to pay for the cleanups.
 - f. Provide the comprehensive set of tools that the state needs to address the historic and future challenges that we are facing the state due to PFAS contamination.
 - g. Provide the state agencies the resources they need to respond to these national and statewide challenge.

There is a bill draft that does all of that – it is the CLEAR act –SB 302 and AB 321. The CLEAR act provides this state with the tools it needs to move forward to comprehensively address this issue, and in a manner that puts systems and standards in place in a timely manner – not years from now.

The DNR is offering to meet with any legislator interested in the tools the DNR needs to address the needs of our citizens, businesses, communities, and the impacted environment.

On behalf of the DNR of Natural Resources, I would like to thank you for your time today. I would be happy to answer any questions you may have.

Attachment: Appendix 1

Appendix 1: Technical Recommendations for Consideration:

- Section 1. 299.48 (2) Prohibition. Please clarify the term “intentionally added PFAS.”
- Section 1. 299.48 (3) (a). Consider cross-referencing 292.11(9)(b), that currently specifies that any discharge of fire-fighting foam (FFF) containing a hazardous substance requires the notification to the DNR as a hazardous substance discharge, well as a response under 292.11. This is true for use of FFF to fight fires or for an accidental spill.
- Section 1. 299.48 (3) (b) – Would the definition of “testing purposes” also include training. This legislation should apply equally to testing, training or both types of facilities.
- Section 1. 299.48 (3) (b) – Consider replacing the term “releases” with the term “discharges” to be consistent with 292.01 (3). These words have two separate meanings in ch. 292, Stats.